

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of CAROLYN B. SCOTT and DEPARTMENT OF THE ARMY,
Fort Gordon, Ga.

*Docket No. 97-285; Submitted on the Record;
Issued September 30, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's monetary compensation benefits on the grounds that she refused to accept suitable work.

The Board has duly reviewed the case record and finds that the Office met its burden of proof in this case.

Section 8106(c) of the Federal Employees' Compensation Act¹ provides that a partially disabled employee who: (1) refuses to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation. The Board has held that the Office bears the burden of proof to show that the work offered was suitable.² An employee who refuses or neglects to work after suitable work has been offered, however, bears the burden of showing that such refusal to work was justified.³

In the present case, the Office accepted that appellant, a dental technician, sustained allergic contact dermatitis, chronic eczematous dermatitis, and allergy to thiuram as a result of her employment duties on or about March 19, 1982. The record indicates that appellant was in receipt of periodic roll temporary total disability benefits since June 27, 1984. As appellant was not in receipt of ongoing medical treatment, the Office referred her to Dr. Rodney Susong for a second opinion medical evaluation. On January 3, 1992 Dr. Susong reported that appellant could return to work with the restriction that she wear gloves with protective lining on her hands. On March 11, 1996 the employing establishment offered appellant a position as patient

¹ 5 U.S.C. § 8106 (c) (2).

² *Michael E. Moravec*, 46 ECAB 492 (1995).

³ *Id.*

administrative clerk in Augusta, Georgia. On March 25, 1996 appellant declined the job offer and advised that she had moved out of the Augusta, Georgia area to Huntsville, Alabama, nine years previously. Appellant stated that she could not accept the position offered unless the Office was willing to purchase her home and relocate her family back to Augusta, Georgia. On May 6, 1996 the Office advised appellant that the patient administrative clerk position had been found to be suitable to her capabilities and was currently available. Appellant was advised that she should accept the position or provide an explanation for refusing the position within 30 days. On June 5, 1996 the Office advised appellant that the May 6, 1996 finding of suitability had been premature and was rescinded. On June 7, 1996 the employing establishment again offered appellant the position of patient administrative clerk. The employing establishment provided to appellant at this time a copy of the job description and advised appellant that the employing establishment was willing to reimburse appellant for relocation expenses, including but not limited to transportation costs, temporary quarters expenses, reimbursement expenses for sale and purchase of a primary residence, and moving expenses.

On July 31, 1996 the Office advised appellant that the position of patient administrative clerk at Fort Gordon Georgia had been found by the Office to be suitable to her work capabilities. Appellant was advised that she had 30 days from the date of this letter to accept the position or provide an explanation of the reasons for refusing the position. Appellant was advised that if she failed to accept the offered position and failed to demonstrate that the failure was justified, her compensation would be terminated. Appellant did not respond to the employing establishment's June 7, 1996 letter or to the Office's July 31, 1996 letter.

The Board has reviewed the evidence of record and finds that there is no medical evidence of record which would contraindicate appellant's ability to perform the position offered as suitable work. The Board also notes that appellant has not indicated that she could not medically perform the position. The Board therefore concludes that the position was within appellant's medical restrictions and was suitable work.

It is well established that the termination of benefits under section 8106(c) raises due process and fairness considerations.⁴ The Board has explained that these considerations arise because compensation benefits constitute a property interest that is protected by the due process clause. As the Supreme Court has held that the essential requirements of due process are "notice and an opportunity to respond," these essential due process principles require that an employee have "at least notice and an opportunity to respond in some manner" prior to the termination of compensation benefits.⁵ Accordingly, a claimant's monetary compensation may not be terminated under section 8106(c)(2) for neglecting suitable work without prior notification and an opportunity to respond.

On July 31, 1996 the Office complied with the procedural requirements of advising appellant of the suitability of the position offered, that the job remained open, the sanctions for refusing the job, and provided appellant with the opportunity to either accept the position or

⁴ *Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

⁵ *Mary A. Howard*, 45 ECAB 646 (1994).

provide an explanation for her refusal. Appellant did not respond to the Office's July 31, 1996 letter. Thereafter, by decision dated September 9, 1996, her compensation benefits were terminated for refusal to accept a suitable work position.

The Board notes that in March 1996 appellant had advised the employing establishment of concerns regarding relocation and appellant requested that the employing establishment reimburse her for her relocation costs. The employing establishment thereafter advised appellant, in detail, that her relocation expenses would in fact be reimbursed. After the suitable work offer was renewed on July 31, 1996 appellant never responded by accepting or rejecting the position.

As the Office properly found that appellant could medically perform the position, and as the Office fulfilled its procedural requirements by providing appellant notice of its suitable work determination and opportunity to respond, the Office met its burden of proof to establish that appellant had refused suitable work.

The decision of the Office of Workers' Compensation Programs dated September 9, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 30, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member
